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SENATE BILL 855

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR APPOINTMENT OF RECEIVERS; DEFINING TERMS; MAKING UNAPPROVED SECURITIES VOIDABLE; CHANGING CERTAIN HEARING REQUIREMENTS; CHANGING DUE DATES FOR CERTAIN FEES; PROVIDING FOR SYSTEM RELIABILITY REQUIREMENTS; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Utility Act is enacted to read:

"[NEW MATERIAL] APPOINTMENT OF RECEIVER. --Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or is unresponsive to the rules or orders

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1 of the commission, the commission may commence an action in the
2 district court of the county where the utility has its
3 principal office or place of business for the appointment of a
4 receiver to assume possession of its property and to operate
5 its system upon terms and conditions in accordance with the
6 provisions of the Public Utility Act, commission rules and
7 orders of the court. Upon the order of the court, the receiver
8 may issue receiver's certificates to provide funds to operate,
9 repair, improve or enlarge the public utility. Unless
10 otherwise provided in the court order, payment of the
11 receiver's certificates is a first lien on the real and
12 personal property of the public utility. The court shall
13 prescribe the certificate's form, term and rate of interest.
14 Receiver's certificates are exempt from the operation of any
15 law that regulates the issuance or sale of securities of public
16 utilities."

17 Section 2. Section 62-3-3 NMSA 1978 (being Laws 1967,
18 Chapter 96, Section 3, as amended) is amended to read:

19 "62-3-3. DEFINITIONS. -- Unless otherwise specified, when
20 used in the Public Utility Act:

21 A. "affiliated interest" means a person who
22 directly or indirectly, through one or more intermediaries,
23 controls or is controlled by or is under common control with a
24 public utility. Control includes instances where a person is
25 an officer, director, partner, trustee or person of similar

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1 status or function or owns directly or indirectly or has a
2 beneficial interest in ten percent or more of any class of
3 securities of a person;

4 B. "commission" means the public regulation
5 commission;

6 C. "commissioner" means a member of the commission;

7 D. "municipality" means a municipal corporation
8 organized under the laws of the state, and H-class counties;

9 E. "person" means an individual, firm, partnership,
10 company, rural electric cooperative organized under Laws 1937,
11 Chapter 100 or the Rural Electric Cooperative Act, corporation
12 or lessee, trustee or receiver appointed by any court.

13 "Person" does not mean a class A county as described in Section
14 4-36-10 NMSA 1978 or a class B county as described in Section
15 4-36-8 NMSA 1978. "Person" does not mean a municipality as
16 defined in this section unless the municipality has elected to
17 come within the terms of the Public Utility Act as provided in
18 Section 62-6-5 NMSA 1978. In the absence of voluntary election
19 by a municipality to come within the provisions of the Public
20 Utility Act, the municipality shall be expressly excluded from
21 the operation of that act and from the operation of all its
22 provisions, and no such municipality shall for any purpose be
23 considered a public utility;

24 F. "securities" means stock, stock certificates,
25 bonds, notes, debentures, mortgages or deeds of trust or

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1 [other] similar evidences of indebtedness issued, executed or
2 assumed by a utility;

3 G. "public utility" or "utility" means every person
4 not engaged solely in interstate business and, except as stated
5 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
6 operate, lease or control:

7 (1) any plant, property or facility for the
8 generation, transmission or distribution, sale or furnishing to
9 or for the public of electricity for light, heat or power or
10 other uses;

11 (2) any plant, property or facility for the
12 manufacture, storage, distribution, sale or furnishing to or
13 for the public of natural or manufactured gas or mixed or
14 liquefied petroleum gas for light, heat or power or other uses;
15 but the term "public utility" or "utility" shall not include
16 any plant, property or facility used for or in connection with
17 the business of the manufacture, storage, distribution, sale or
18 furnishing of liquefied petroleum gas in enclosed containers or
19 tank truck for use by others than consumers who receive their
20 supply through any pipeline system operating under municipal
21 authority or franchise and distributing to the public;

22 (3) any plant, property or facility for the
23 supplying, storage, distribution or furnishing to or for the
24 public of water for manufacturing, municipal, domestic or other
25 uses; provided, however, that nothing contained in this

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1 paragraph shall be construed to apply to irrigation systems,
2 the chief or principal business of which is to supply water for
3 the purpose of irrigation;

4 (4) any plant, property or facility for the
5 production, transmission, conveyance, delivery or furnishing to
6 or for the public of steam for heat or power or other uses; or

7 (5) any plant, property or facility for the
8 supplying and furnishing to or for the public of sanitary
9 sewers for transmission and disposal of sewage produced by
10 manufacturing, municipal, domestic or other uses; provided that
11 the terms "public utility" or "utility" as used in the Public
12 Utility Act do not include any utility owned or operated by a
13 class A county as described in Section 4-36-10 NMSA 1978 either
14 directly or through a corporation owned by or under contract
15 with such a county;

16 H. "rate" means every rate, tariff, charge or other
17 compensation for utility service rendered or to be rendered by
18 a utility and every rule, regulation, practice, act,
19 requirement or privilege in any way relating to such rate,
20 tariff, charge or other compensation and any schedule or tariff
21 or part of a schedule or tariff thereof;

22 I. "renewable energy" means electrical energy
23 generated by means of a low- or zero-emission generation
24 technology that has substantial long-term production potential
25 and may include, without limitation, the following energy

1 sources: solar, wind, hydropower, geothermal, landfill gas,
2 anaerobically digested waste biomass or fuel cells that are not
3 fossil fueled. "Renewable energy" does not include fossil fuel
4 or nuclear energy;

5 J. "service" or "service regulation" means every
6 rule, regulation, practice, act or requirement relating to the
7 service or facility of a utility;

8 K. "Class I transaction" means the sale, lease or
9 provision of real property, water rights or other goods or
10 services by an affiliated interest to a public utility with
11 which it is affiliated or by a public utility to its affiliated
12 interest;

13 L. "Class II transaction" means:

14 (1) the formation after May 19, 1982 of a
15 corporate subsidiary by a public utility or a public utility
16 holding company by a public utility or its affiliated interest;

17 (2) the direct acquisition of the voting
18 securities or other direct ownership interests of a person by a
19 public utility if such acquisition would make the utility the
20 owner of ten percent or more of the voting securities or other
21 direct ownership interests of that person;

22 (3) the agreement by a public utility to
23 purchase securities or other ownership interest of a person
24 other than a nonprofit corporation, contribute additional
25 equity to, acquire additional equity interest in or pay or

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1 guarantee any bonds, notes, debentures, deeds of trust or other
2 evidence of indebtedness of any such person; provided, however,
3 that a public utility may honor all agreements entered into by
4 such utility prior to May 19, 1982; or

5 (4) the divestiture by a public utility of any
6 affiliated interest that is a corporate subsidiary of the
7 public utility;

8 M "corporate subsidiary" means any person ten
9 percent or more of whose voting securities or other ownership
10 interests are directly owned by a public utility; and

11 N. "public utility holding company" means an
12 affiliated interest that controls a public utility through the
13 direct or indirect ownership of voting securities of that
14 public utility."

15 Section 3. Section 62-6-11 NMSA 1978 (being Laws 1941,
16 Chapter 84, Section 23, as amended) is amended to read:

17 "62-6-11. SECURITIES ~~[VOID]~~ VOIDABLE UNLESS APPROVED. --
18 All securities issued, assumed or guaranteed without
19 application to and approval of the commission, except the
20 securities mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978,
21 ~~[shall be void]~~ are voidable."

22 Section 4. Section 62-8-7.1 NMSA 1978 (being Laws 1985,
23 Chapter 221, Section 3, as amended) is amended to read:

24 "62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF
25 SMALL WATER AND SEWER UTILITIES. -- ~~[A.]~~ Whenever there is filed

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1 with the commission any schedule proposing any new ~~[rate or]~~
2 rates pursuant to Section 62-8-7 NMSA 1978 by any public
3 utility as defined in Paragraph (3) or (5) of Subsection G of
4 Section 62-3-3 NMSA 1978 whose annual operating revenues
5 averaged less than five hundred thousand dollars (\$500,000)
6 over ~~[any]~~ the most recent consecutive ~~[three-year]~~ five-year
7 period, the ~~[rate or]~~ rates shall become effective as proposed
8 by the utility without a hearing; provided that the utility
9 shall be required to give written notice of the proposed rates
10 to the ratepayers receiving service from the utility at least
11 sixty days prior to filing the proposed rate change with the
12 commission and provided further that the commission shall enter
13 upon a hearing concerning the reasonableness of any proposed
14 rates filed by such a utility pursuant to Subsections C and D
15 of Section 62-8-7 NMSA 1978 when any rate increase would have
16 the effect of increasing the ~~[rate or]~~ rates fifty percent or
17 more in any twelve-month period or upon the filing with the
18 commission of a protest seeking review of the proposed ~~[rate~~
19 ~~or]~~ rates signed by ten percent or more of the ratepayers
20 receiving service from such a utility. For purposes of this
21 section, each person who receives a separate bill equals one
22 ratepayer and each person who receives multiple bills equals
23 one ratepayer. The petition shall be signed by the person in
24 whose name service is carried. The petition shall be filed no
25 later than twenty days after the filing with the commission of

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1 the schedule proposing the new rates. In all other respects,
2 Section 62-8-7 NMSA 1978 shall apply to such water utilities.
3 If a utility provides both water and sewer service, the annual
4 operating revenues attributable to the provision of water
5 service only shall determine whether the procedures specified
6 in this section shall apply to any schedule proposing any new
7 [~~rate or~~] rates for water service, and the annual operating
8 revenues attributable to the provision of sewer service shall
9 determine whether the procedures specified in this section
10 shall apply to any schedule proposing any new [~~rate or~~] rates
11 for sewer service. "

12 Section 5. Section 62-8-8 NMSA 1978 (being Laws 1967,
13 Chapter 96, Section 6, as amended) is amended to read:

14 "62-8-8. INSPECTION AND SUPERVISION FEE. -- Each utility
15 doing business in this state and subject to the control and
16 jurisdiction of the commission with respect to its rates or
17 service regulations shall pay annually to the state a fee for
18 the inspection and supervision of such business in an amount
19 equal to five hundred six thousandths percent of its gross
20 receipts from business transacted in New Mexico for the
21 preceding calendar year. That sum shall be payable on or
22 before the [~~last day of February~~] first day of April in each
23 year. An inspection and supervision fee shall be paid by
24 utilities in addition to all property, franchise, license,
25 intangible and other taxes, fees and charges provided by law.

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1 No similar inspection and supervision fee shall be measured by
2 the amount of the gross receipts of such utility for the
3 calendar year next preceding the date fixed in this section for
4 the payment of the fee. In the case of utilities engaged in
5 interstate business, the inspection and supervision fee shall
6 be measured by the gross receipts of those utilities from
7 intrastate business only for that preceding calendar year and
8 not in any respect upon receipts derived wholly or in part from
9 interstate business. No inspection and supervision fee shall
10 be charged on the gross receipts from the sale of gas, water or
11 electricity to a utility regulated by the commission for resale
12 to the public."

13 Section 6. Section 62-9-3 NMSA 1978 (being Laws 1971,
14 Chapter 248, Section 1, as amended) is amended to read:

15 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

16 A. The legislature finds that it is in the public
17 interest to consider any adverse effect upon the environment
18 and upon the quality of life of the people of the state that
19 may occur due to plants, facilities and transmission lines
20 needed to supply present and future electrical services. It is
21 recognized that such plants, [~~lines and~~] facilities and
22 transmission lines will be needed to meet growing demands for
23 electric services and cannot be built without in some way
24 affecting the physical environment where these plants,
25 facilities and transmission lines are located. The legislature

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1 therefore declares that it is the purpose of this section to
2 provide for the supervision and control by the commission of
3 the location within this state of new plants, facilities and
4 transmission lines for the generation and transmission of
5 electricity for sale to the public.

6 B. ~~No~~ A person, including any municipality, shall
7 not begin the construction of any plant designed for or capable
8 of operation at a capacity of three hundred thousand kilowatts
9 or more for the generation of electricity for sale to the
10 public within or without this state, whether or not owned or
11 operated by a person that is a public utility subject to
12 regulation by the commission, or of transmission lines in
13 connection with such a plant, on a location within this state
14 unless the location has been approved by the commission. For
15 the purposes of this section, "transmission line" means any
16 electric transmission line and associated facilities designed
17 for or capable of operations at a nominal voltage of two
18 hundred thirty kilovolts or more, to be constructed in
19 connection with and to transmit electricity from a new plant
20 for which approval is required.

21 C. Application for approval shall contain all
22 information required by the commission to make its
23 determination, be made in writing setting forth the facts
24 involved and be filed with the commission. The commission
25 shall, after a public hearing and upon notice as the

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1 commission may prescribe, act upon the application. The
2 commission may condition its approval upon a demonstration by
3 the applicant that it has received all necessary air and
4 water quality permits.

5 D. [No] Approval shall not be required for
6 construction in progress on the effective date of this
7 section or for additions to or modifications of an existing
8 plant or transmission line.

9 E. The commission shall approve the application
10 for the location of the generating plant unless the
11 commission finds that the operations of the facilities for
12 which approval is sought will not be in compliance with all
13 applicable air and water pollution control standards and
14 regulations existing or will unduly impair system
15 reliability. The commission shall not require compliance
16 with performance standards other than those established by
17 the agency of this state having jurisdiction over a
18 particular pollution source.

19 F. The commission shall approve the application
20 for the location of the transmission lines unless the
21 commission finds that the location will unduly impair
22 important environmental values or the operation of the
23 proposed transmission lines will unduly impair power system
24 reliability.

25 G. [No] An application shall not be approved

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1 pursuant to this section [~~which~~] if it violates an existing
2 state, county or municipal land use statutory or
3 administrative regulation unless the commission finds that
4 the regulation is unreasonably restrictive and compliance
5 with the regulation is not in the interest of the public
6 convenience and necessity, in which event and to the extent
7 found by the commission the regulation shall be inapplicable
8 and void as to the siting. When it becomes apparent to the
9 commission that an issue exists with respect to whether a
10 regulation is unreasonably restrictive and compliance with
11 the regulation is not in the interest of public convenience
12 and necessity, it shall promptly serve notice of that fact by
13 certified mail upon the agency, board or commission having
14 jurisdiction for land use of the area affected and shall make
15 the agency, board or commission a party to the proceedings
16 upon its request and shall give it an opportunity to respond
17 to the issue. The judgment of the commission shall be
18 conclusive on all questions of siting, land use, aesthetics
19 and any other state or local requirements affecting the
20 siting.

21 H. Nothing in this section shall be deemed to
22 confer upon the commission power or jurisdiction to regulate
23 or supervise any person, including a municipality, that is
24 not otherwise a public utility regulated and supervised by
25 the commission, with respect to its rates and service and

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1 with respect to its securities, nor shall any other provision
2 of the Public Utility Act be applicable with respect to such
3 a person, including a municipality.

4 I. The commission shall issue its order granting
5 or denying the application within six months from the date
6 the application is filed with the commission. Failure to
7 issue its order within six months is deemed to be approval of
8 the application; provided, however, that the commission may
9 extend the time for granting approval for a transmission line
10 that is subject to this section for an additional ten months
11 upon finding that the additional time is necessary to
12 determine if the proposed location of the line will unduly
13 impair important environmental values. "

14 Section 7. Section 63-7-20 NMSA 1978 (being Laws 1951,
15 Chapter 194, Section 1, as amended) is amended to read:

16 "63-7-20. UTILITY AND CARRIER INSPECTION--FEE. --

17 A. Each utility and carrier doing business in
18 this state which is subject to the control and jurisdiction
19 of the commission by virtue of the provisions of Article 11
20 of the constitution of New Mexico with respect to its rates
21 and service shall pay annually to the commission a fee in
22 performance of its duties as now provided by law. The fee
23 for carriers shall not exceed two hundred fifty-six
24 thousandths percent of its gross receipts from business
25 transacted in New Mexico for the preceding calendar year.

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1 The fee for utilities shall not exceed five hundred eleven
2 thousandths percent of its gross receipts from business
3 transacted in New Mexico for the preceding calendar year.
4 This sum shall be payable annually on or before [~~January 20~~
5 ~~or in equal quarterly installments on or before January 20,~~
6 ~~April 20, July 20 and October 20~~] April 1 in each year. No
7 similar fee shall be imposed upon the utility or carrier. In
8 the case of utilities or carriers engaged in interstate
9 business, the fees shall be measured by the gross receipts of
10 the utilities or carriers from intrastate business only for
11 the preceding calendar year and not in any respect upon
12 receipts derived wholly or in part from interstate business.
13 As used in this section, "utility" includes telephone
14 companies and transmission companies.

15 B. When a fee is not paid on the date it is due,
16 interest shall be paid to the state on the amount due. The
17 interest on the amount due shall start to accrue on the day
18 following the due date and will continue to accrue until the
19 total amount due is paid. The rate of interest on a late fee
20 payment shall be fifteen percent per year, computed at the
21 rate of one and one-fourth percent per month.

22 C. In addition to any interest due on a late fee
23 payment, a penalty shall be paid to the state for failure to
24 pay the fee when it is due. The penalty imposed shall be two
25 percent of the amount of the fee due.

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1 D. The attorney general, in the name of the
2 state, shall bring suit to collect fees, interest and
3 penalties that remain unpaid."

4 Section 8. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2005.

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